IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Bail Appl..No. 5225 of 2007()

CRIME NO.62/05 OF NADAKKAVU POLICE STATION, KOZHIKODE.

PETITIONER/ACCUSED

KURIEN VARGHESE, S/O V.T.VARGHESE,
AGED 75 YEARS, VETTIMOOTTIL HOUSE,
NARANGANAM MURI & VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
(CRIME NO.62/2005 OF NADAKKAVU POLICE STATION)

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5225 OF 2007

Dated this the 7th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The crux of the allegations against him is that the contraband articles were recovered from a vehicle of which he is the registered owner. Investigation is complete. Final report has already been filed. Committal proceedings has been registered. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. He is not, in any way, connected with the vehicle now. The same has been transferred to another, though such transferee has not so far taken any steps to get the mutation effected in the Registration Certificate. It would traversity of justice if

the petitioner were to be arrested and detained in custody even in execution of a non-bailable warrant issued by a court. In these circumstances, it is prayed that powers under Sec.438 of the Cr.P.C. may be invoked in favour of the petitioner – an Ex-service man.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor was requested to pointedly explain to this Court the precise nature of the allegation against the petitioner. Except that the petitioner continues to be the registered owner of the vehicle, no other circumstances are pressed into service to indicate the complicity of the petitioner. The transferee from the petitioner has been ascertained by the Investigator.

4. I have considered all the relevant inputs. It is trite, after the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), that the powers under Sec.438 of the Cr.P.C. can be invoked even in a case where the apprehended arrest is in execution of a non-bailable warrant issued by a court after taking cognizance. In the facts and circumstances to which I have made a brief reference above, I am satisfied that this is an eminently fit case where such discretion can and ought to be invoked in favour of the

petitioner.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The warrant of arrest issued against the petitioner shall not be executed till 15/9/2007.

(ii) The petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m. on 15/9/07. He shall be released on bail on his executing a bond for Rs.25,000/- without any sureties.

(iii) The petitioner shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge